

**IN THE DISTRICT COURT OF THE UNITED STATES  
FOR THE WESTERN DISTRICT OF NORTH CAROLINA  
ASHEVILLE DIVISION  
1:12 cr 85**

**UNITED STATES OF AMERICA,**

**Vs.**

**DONZELL ALI MCKINNEY.**

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**ORDER**

**THIS MATTER** is before the Court upon a Motion for Issuance of Subpoena (#16) filed by counsel for Defendant. Although not stated in the motion, it appears that Defendant is moving the pursuant to Rule 17(b) of the Federal Rules of Criminal Procedure to issue a subpoena to Officer D.S. (Scott) James of the Asheville Police Department to appear and testify at a sentencing hearing at an unknown time and place but which Defendant “anticipates will be scheduled in March, 2013”. Rule 17(b) of the Federal Rules of Criminal Procedure provides as follows:

**(b) Defendant Unable to Pay.**

Upon a defendant’s ex parte application, the court must order that a subpoena be issued for a named witness if the defendant shows an inability to pay the witness’s fees and the necessity of the witness’s presence for an adequate defense. If the court orders a subpoena to be issued, the process costs and witness fees will be paid in the same manner as those paid for witnesses the government subpoenas.

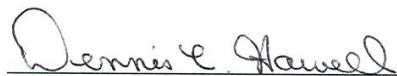
It appears that Defendant has requested that a subpoena be issued for a

named witness and Defendant has shown an inability to pay the witness fee and has further shown the necessity of the witnesses' presence for an adequate defense. As a result, the undersigned will allow the motion of Defendant.

### **ORDER**

**IT IS, THEREFORE, ORDERED** that the Motion for Issuance of Subpoena (#16) is **ALLOWED** and it is **ORDERED** that Defendant's counsel issue a subpoena commanding Officer D.S. (Scott) James of the Asheville Police Department to appear at a sentencing hearing for Defendant. Defendant's counsel is to provide a specified time and place for the appearance of Officer James. It is further ordered that the process cost and witness fees for the subpoena shall be paid in the same manner as those paid for witnesses the government subpoenas.

Signed: February 1, 2013

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Dennis L. Howell  
United States Magistrate Judge

